

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Robertson, et al.	
Application No.: 10/601118	Art Unit: 3686
Filed: 6/23/2003	Examiner: R. David Rines
Title: Risk Classification Methodology	
Attorney Docket No.: RF010906USNP	

Commissioner for Patents
P.O. Box 1450
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APPEAL BRIEF

An appeal brief for the above referenced application is attached hereto.

EXTENSION OF TIME

The Applicant respectfully requests all necessary extensions of time. All fees not otherwise paid are to be charged to the agent's USPTO deposit account 502,083.

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I. REAL PARTY OF INTEREST

The real party of interest is the assignee, RightFind Technology Company LLC, of Boston, MA.

II. RELATED APPEALS AND INTERFERENCES

There are no other pending appeals, interferences or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1 to 36 have been cancelled.

Claims 37 to 39 are rejected.

Claims 40 to 43 are cancelled.

Claims 44 to 46 are rejected.

Claim 47 is cancelled.

The rejection of claims 37 to 39 and 44 to 46 is appealed.

IV. STATUS OF AMENDMENTS

No amendments have been made since the last office action. Said office action is dated April 28, 2009.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The claimed subject matter is directed to a method for improving the ability of an auto insurance company to determine how likely a person is to have future accidents and file future insurance claims to recover damages from those accidents (Specification, p. 1, lines 9-10). It is based on the premise that the expected number of future insurance claims filed by a prospective insured is related to the prospective insured's personality (Specification, p. 3, lines 15-19). In order for a driver to file an insurance claim, the driver must have an accident and report it to an insurance company (Specification, p. 4, lines 23-26). The method, therefore, presents a prospective

insured with questions related to the personality traits associated with both having an accident and reporting an accident (Specification, p. 4, lines 23-26).

The prospective insured is presented with an unusually small number of personality-based "target questions" selected from a larger set of personality-based "candidate questions" (Specification, p. 10, lines 4-5). The target questions are selected from the candidate questions by performing a survey of 200 or more drivers (Specification, p. 10, lines 5-6). The survey population is asked the candidate questions along with questions related to conventional risk selection criteria, such as age (Specification, p. 10, lines 1-3). They are also asked what their past insurance claims have been (Specification, p. 9, lines 26-27). The answers to the candidate questions are then correlated to the insurance claims of the survey population to find which questions in particular correlate with insurance claims, even after conventional risk selection criteria have been accounted for (Specification, p. 10, lines 19-21). These particular questions then become the target questions which are presented to prospective insureds (Specification, p. 12, lines 3-7).

The Applicant has provided experimental results showing how a specific set of four target questions were selected from a large set of candidate questions (Specification, p. 10, line 26 through p. 11, line 5). The Applicant also described a general method that could be used to generate additional sets of target questions as needed (Specification, p. 7, lines 26-27).

None of the prior art of record presents any specific candidate questions or target questions. Nor does it describe any method for selecting candidate questions from target questions. This is our fundamental argument for why the Examiner must be reversed.

As used herein and within the prior art, the terms "questions" and "items" are generally regarded as synonyms when used with respect to surveys.

The independent claim is claim 37. Following the independent claim support for each claim limitation is set forth.

37. *A method for risk classification of a prospective insured, said prospective insured applying for automobile insurance, said prospective insured belonging to a demographic group, said method comprising:*

- a. providing to said prospective insured a set of four or more target questions;*
- b. obtaining a set of responses to said set of four or more target questions from said prospective insured;*
- c. automatically classifying said prospective insured into a risk class based at least in part on said set of responses;*

wherein said set of four or more target questions have been devised by a survey method comprising the steps of:

- d. composing a survey of 50 or more candidate questions that are indicative of personality traits that may affect accident involvement and reporting;*
- e. providing said survey to a sample population of 200 or more people;*
- f. collecting information from said sample population, said information comprising:*

- i. responses to said survey;*
- ii. the number of automobile insurance claims reported by each of said persons in said sample population; and*
- iii. conventional classification information for automobile insurance underwriting, said conventional classification information comprising:*

- 1. age;*
- 2. marital status;*
- 3. years of driving experience;*
- 4. number of miles driven per year;*

- g. analyzing said information to select said set of four or more target questions from among said candidate questions such that the survey responses by said sample population to said set of four or more target questions significantly increase the multiple correlation between said survey*

responses and said number of automobile insurance claims reported by said sample population when said conventional classification information is controlled for, said increase in the multiple correlation being statistically significant to at least the 5% level of confidence;

wherein said step of analyzing said information to select said set of four or more target questions is carried out on a particular computer modified to calculate multiple correlations and the levels of confidence thereof.

Support in Specification

Steps a, b, and c of claim 37 recite the method for classifying a prospective insured into a risk class. Support is found in Figure 3. Step a corresponds to item 300. Step b corresponds to item 302. Step c corresponds to item 304. Further support is found on page 12 of the Specification.

Steps d, e, f and g recite the method for selecting the target questions from a larger set of candidate questions. Support is found in Figure 1. Step d corresponds to item 100. Steps e and f correspond to item 102. Step g corresponds to item 104. Further support is found on page 7, line 25 through page 11, line 5 of the Specification.

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL.

The applicant requests that the following grounds of rejection presented in the most recent office action of April 28, 2009 be reviewed;

- Rejection of claims 37 – 39 and 44 - 46 under 35 U.S.C. 112, first paragraph, that the applicant did not have possession of the claimed invention when the application was filed.
- Rejection of claims 37 – 39 and 44 - 46 under 35 U.S.C. 112, second paragraph, that the claims are indefinite.
- Rejection of claims 37 – 39 and 44 - 46 under 35 U.S.C. 103 as being unpatentable over Haner in view of Lajunen and DeTore.

VII. ARGUMENT

- A. Claims 37 – 39 and 44 - 46 meet the requirements under 35 U.S.C. § 112, first paragraph, as being directed towards subject matter that the applicant was in possession of when the application was filed because (1) the specification provides for more than four target questions; (2) the specification instructs one skilled in the art how to generate additional questions and determine if the questions are suitable; (3) the fact that one skilled in the art recognized the applicant had possession of the claimed invention is evidenced by the declaration of Dr. Nathan A. Thompson, which was ignored by the Examiner without comment.**

The Examiner has rejected claims 37 – 39 and 44 – 46 under 35 U.S.C. 112, first paragraph as failing to comply with the written description requirement. The claims will be argued as a group with respect to said rejection.

The Examiner has asserted that the claims(s) contain subject matter which was not described in the Specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. More particularly, the Examiner alleges that because the survey method described in steps d through g of claim 37 produced four target questions in the Applicant's detailed example provided in the Specification, that there was insufficient evidence that, at the time the invention was made, the Applicant was in possession of a method that could produce more than four questions. Such a contention is clearly erroneous and must be reversed.

The Examiner must be reversed for each of the following reasons:

1. The Examiner misconstrues the law of 35 U.S.C. § 112, first paragraph by requiring the Applicant to show a "limitless" number of target questions in the Specification to support claim language specifying "four or more" target questions.
2. The Examiner ignores the teachings of the Specification which explicitly provide examples of more than four target questions.
3. The Examiner ignores the fact that the Specification instructs one skilled in the art how to generate additional target questions and determine if the questions are suitable for use in the claimed method.

4. The Examiner ignores, without comment, the Declaration of Dr. Nathan A. Thompson which evidences that one skilled in the art would recognize that the Applicant was in possession of the claimed invention at the time of filing.

More particularly:

- 1. The Examiner misconstrues the law of 35 U.S.C. § 112, first paragraph by requiring the Applicant to show a "limitless" number of target questions in the Specification to support claim language specifying "four or more" target questions; thus, the Examiner must be reversed.**

In the Office Action of April 28, 2009, the Examiner rejects the claims because the Specification does not include a limitless number of questions, stating:

"Examiner has reviewed the Specification as originally filed and can find reference to only four questions which [sic] the 'level of confidence' criteria and not a limitless number of questions. Accordingly, Examiner submits that there is insufficient evidence that, at the time the invention was made, Applicant was in possession of a method in which greater than four questions met the 5% level of confidence criteria." (page 3 of the Office Action)

There is no requirement under 35 U.S.C. §112, first paragraph, that the Applicant provide "limitless" target questions in order to support a claim to "four or more." The fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed. See, e.g., *Vas-Cath, Inc.*, 935 F.2d at 1563-64, 19 USPQ2d at 1117. Here the claim language is "four or more." Thus, the Applicant need only show they were in possession of "four or more." Any requirement of showing a "limitless" number of questions is clearly unsupported by law. Therefore, the Examiner must be reversed.

- 2. The Examiner ignores the teachings of the Specification which explicitly provide examples of more than four target questions; thus, the Examiner must be reversed.**

The Specification provides a clearly non-exhaustive example of ten different initial items which could ultimately be used as target questions (Specification, p. 8, line 25 through p. 9, line 10). Ten is more than four. The Specification describes how to survey a group of individuals with these questions and then to analyze these results and then select the best questions as target questions. In the example given, questions are selected which, for the sample population (with conventional classification information controlled for), provide an increase in the multiple correlation being statistically significant to at least the 5% level of confidence.

Any of the ten different initial items may ultimately be target questions if the results from a survey show statistical significance at the desired level of confidence. Thus, the Specification clearly teaches more than four questions which may be used as target questions. The selection of these questions is determined by the analysis of a survey. Thus, varying survey results could show statistical significance at the 5 percent level of confidence for more than four questions.

3. The Examiner ignores the fact that the Specification instructs one skilled in the art how to generate target questions and determine if the questions are suitable for use in the claimed method; thus, the Examiner must be reversed.

The Examiner also ignores the fact that the Specification clearly sets forth a surveying method for generating target questions which show the desired statistical significance. In other words, the Applicant has described a tool which can be used to generate additional sets of target questions. Thus, one skilled in the art would understand how to generate target questions which show the desired statistical significance at the desired level of confidence. Moreover, one skilled in the art would understand the Specification as teaching how to generate and use any number of target questions, including "four or more."

4. The Examiner ignores, without comment, the Declaration of Dr. Nathan A. Thompson which evidences that one skilled in the art would recognize that the Applicant was in possession of the claimed invention at the time of filing; thus the Examiner must be reversed.

Prior to the issuance of the Examiner's most recent rejection of April 28, 2009, the Applicant had submitted a declaration under 37 CFR 1.132 by Dr. Nathan A. Thompson (Thompson). This Declaration supports the Applicant's assertion that it was in full possession of said claimed method. A copy of said Declaration can be found in the Appendix attached hereto.

"The written description in the original disclosure as a whole does not have to describe the invention later claimed in haec verba, but such written description 'must . . . convey with reasonable clarity to those skilled in the art that . . . [appellant] was in possession of the invention . . . now claimed.' Vas-Cath Inc. v. Mahurkar, 935 F.2d 1555, 1563-64 (Fed. Cir. 1991)" (ex parte Wim J. Van Ooij, Appeal 2008-3517)

Dr. Thompson is a vice president of Assessment Systems Corporation in St. Paul, MN. His responsibilities include the design and development of computerized psychometric tests. In addition, he has a Ph.D. in Psychometrics from the University of Minnesota with a supporting area of industrial/organizational psychology. He is therefore skilled in the art of the claimed invention and is qualified to render opinions on the subject matter pertaining thereto.

In his answer to question 1 of the Declaration, Dr. Thompson states:

"There is enough information in Robertson et al. for a person qualified in the field of computer implemented psychometric test design to develop a list of more than four target questions."

A clear error in the Examiner's rejection was that he failed to consider this declaration. The Examiner, therefore, must be reversed.

B. Claims 37 – 39 and 44 - 46 meet the requirements under 35 U.S.C. § 112, second paragraph, as particularly pointing out and distinctly claiming the subject matter which applicants regards as the invention.

The Examiner has rejected claims 37 – 39 and 44 – 46 under 35 USC 112, second paragraph. The claims will be argued as a group with respect to said rejection. Claim 37 is the independent claim.

The Examiner has asserted:

“It is unclear however [sic] the questions are selected to ensure the claimed ‘significant increase’.” (page 4 of the office action)

The Examiner has erred in rejecting the claims under 35 USC 112, second paragraph by failing to consider the above referenced Expert Declaration provided by Dr. Nathan Thompson.

“The test for definiteness under 35 U.S.C. § 112, second paragraph, is whether ‘those skilled in the art would understand what is claimed when the claim is read in light of the specification.’ Orthokinetics, Inc. v. Safety Travel Chairs, Inc., 806 F.2d 1565, 1576 (Fed. Cir. 1986) (citations omitted).” (Ex parte Tichler, Appeal 2009-001045)

Dr. Thompson is skilled in the art of the invention. He has indicated that he understands what is claimed when he reads the claim in light of the Specification when he states in his detailed answer to question 1:

“The statistical analysis process used by Robertson et al. produces the minimum number of target items (i.e. questions) from the candidate items that incrementally increase the multiple correlation with the dependent variable, automobile insurance claims.”

Persons of ordinary skill in the art understand what a multiple correlation analysis is, how it is performed, and what it means. The Applicant is not required to include in the application information that is known in the art. In MPEP 2164.05(a), it states:

“The specification need not disclose what is well-known to those skilled in the art and preferably omits that which is well-known to those skilled and already

available to the public. In re Buchner, 929 F.2d 660, 661, 18 USPQ2d 1331, 1332 (Fed. Cir. 1991); *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384, 231 USPQ 81, 94 (Fed. Cir. 1986), cert. denied, 480 U.S. 947 (1987); and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1463, 221 USPQ 481, 489 (Fed. Cir. 1984).”

According to *In re Buchner*, it is preferable that the definition of multiple correlation analysis be excluded when it is understood by a person of ordinary skill in the art.

Accordingly, the Examiner erred by not taking into consideration that which is known in the art and supported by a skilled artisan in the submitted Declaration. The Examiner, therefore, must be reversed.

C. Claims 37 – 39 and 44 - 46 meet the requirements under 35 U.S.C. § 103(a), as such claims are patentably distinct over Haner in view of Lajunen et al. and De Tore et al.

The Examiner has rejected claims 37 – 39 and 44 – 46 under 35 U.S.C. 103(a) as being unpatentable over Haner (Charles F. Haner, *A prediction of Automobile Claims by Psychological Methods*, The Journal of Risk and Insurance, vol. 35, no. 1 (Mar. 1968), pp. 49 – 59) in view of Lajunen (Timo Lajunen & Heikki Summala, *Driving Experience, Personality, and Skill and Safety-Motive Dimensions in Drivers' Self-Assessments*, Person. Individ. Diff. Vol. 19, No. 3 (1995), pp. 307 – 318) and DeTore et al. (US patent 4,975,840). (page 6 of Office action)

Claims 37 and 46 will be argued as a group. Claims 38 and 39 will be argued as a group. Claim 44 will be argued separately. Claim 45 will be argued separately.

1. **Claims 37 and 46** meet the requirements under 35 U.S.C. § 103(a), as such claims are patentably distinct over Haner in view of Lajunen et al. and De Tore et al. because (a) the Examiner has not set forth a *prima facie* case of obviousness with respect to these claims; (b) None of the references alone or in combination teach the element of “wherein said step of analyzing said information to select said set of four or more target questions is carried out on a particular computer modified to calculate multiple correlations and the levels of confidence thereof;” (c) the Examiner ignores, without comment, the persuasive evidence of non-obviousness set forth in the Declaration of Dr. Nathan A. Thompson.

- a. **The Examiner has not set forth a *prima facie* case of obviousness with respect to these claims. Therefore, the Examiner must be reversed.**

“In order to establish a prima facie case of obviousness, the Examiner must show that each and every limitation of the claim is described or suggested by the prior art or would have been obvious based on the knowledge of those of ordinary skill in the art. In re Fine, 837 F.2d 1071,1074 (Fed. Cir. 1988).” (Ex parte William Apps, Appeal 2009-002321)

Numerous elements of claim 37 are neither taught nor reasonably suggested by Haner, Lajunen, DeTore or any of the other prior art of record. Specifically steps a, d, e, f (iii), and g are not found in Lajunen.

Regarding Claim 37, Step a

Step a recites:

- a) *“providing to said prospective insured a set of four or more target questions;”*

Step a is further modified by the wherein clause which states:

“....wherein said set of four or more target questions have been devised by a survey method....”

The Examiner has asserted that Lajunen et al. discloses a set of four or more target questions, said target questions having been devised by a survey method. (page 8 of Office action)

This is a misreading of the teachings of Lajunen and ignores the competent rebuttal evidence provided by Dr. Thompson. As indicated in Dr. Thompson's answer to question 2:

"Lajunen selected the target questions for their survey from a set of candidate questions found in a number of known personality tests based on theoretical considerations, not empirical results." (emphasis added)

Lajunen selected his questions based on theoretical considerations, not empirical results. The claimed survey method produces empirical results. Lajunen, therefore, does not teach step a.

Furthermore, the Examiner has failed to provide any motivation for a person of ordinary skill in the art to modify Lajunen to select questions based on empirical results. As Dr. Thompson further states in his detailed answer to question 2:

"It would have required a pilot study to select items based on empirical aspects for inclusion in the final study. Selecting the best items in each of these scales, however, was not the goal of their research." (emphasis in original)

Selecting a small number of target questions (e.g. 4) was not the goal of Lajunen's research. If Lajunen were to have done so, he would not have been unable to determine the multiplicity of personality traits necessary to achieve his objectives.

Accordingly, the Examiner erred by misconstruing the teachings of Lajunen. The Examiner, therefore, must be reversed.

Regarding Claim 37, Step d

Step d recites:

- d. *“composing a survey of 50 or more candidate questions that are indicative of personality traits that may affect accident involvement and reporting,” (emphasis added)*

The Examiner has asserted that Lajunen et al. discloses a set of candidate questions that are indicative of personality traits that may affect accident reporting. (page 8 of Office action)

This is a misreading of the teachings of Lajunen and ignores the competent rebuttal evidence provided by Dr. Thompson. As indicated in Dr. Thompson’s answer to question 3:

“The most significant major personality factors related to a person’s tendency to report an accident are Conscientiousness and Agreeableness. Lajunen et al. did not measure either of these traits. Their absence is noteworthy.” (emphasis added)

The absence of questions related to Conscientiousness and Agreeableness in Lajunen is noteworthy. Lajunen’s questions, therefore, could not have been indicative of personality traits that may affect accident reporting because they did not include the two most significant personality traits related to accident reporting, Conscientiousness and Agreeableness.

Furthermore, a person of ordinary skill in the art would have no motivation for modifying Lajunen et al. to include questions indicative of personality traits that may affect accident reporting. As Dr. Thompson further states in his detailed answer to question 3:

“The goal of Lajunen’s study was correlating personality factors with perceived driving skill and safety, not accident reporting. The variables utilized reflect this; traits found in the rows of Table 4 include sensation seeking, competitiveness,

and other traits that might be linked to safety. Accident reporting is a different type of dependent variable. (emphasis added)

Accident reporting is a different type of dependent variable. If Lajunen were to have included questions indicative of personality traits that may affect accident reporting, then that would have been irrelevant to the purpose of his study and merely made the study more expensive without providing any benefit.

Accordingly, the Examiner erred by further misconstruing the teachings of Lajunen. The Examiner, therefore, must be reversed.

Regarding Claim 37, Step e

Step e recites:

e. “providing said survey to a sample population of 200 or more people;”

The Examiner has asserted that Lajunen et al. discloses a technique of providing a survey comprising questions indicative of personality traits to a sample population of 200 or more people. (page 8 of Office action)

This is a misreading of the teachings of Lajunen and ignores the competent rebuttal evidence provided by Dr. Thompson. As indicated in Dr. Thompson’s answer to question 4:

“Lajunen et al. reported a study that only used 113 subjects.”(emphasis added)

Lajunen only used 113 subjects, not 200 or more.

Furthermore, a person of ordinary skill in the art would have no motivation for modifying Lajunen et al. to provide his survey to 200 or more people. As Dr. Thompson further states in his detailed answer to question 4:

“The key difference is the dependent variable. Lajunen et al. utilized psychological rating scale type self-report measures as dependent variables, whereas Robertson et al. utilized actual accident involvement dependent variables. 113 subjects was a large enough sample for Lajunen et al.’s purpose. Increasing the number to 200 or more would have significantly added to the cost without necessarily increasing the validity of the results.” (emphasis added)

Increasing the number of Lajunen’s subjects to 200 or more would have significantly added to the cost of the study without necessarily increasing the validity of the results. A person of ordinary skill in the art would not have had a reasonable expectation of significantly improved results relative to the increased cost of the study if he/she had provided it to more people.

Accordingly, the Examiner erred by still further misconstruing the teachings of Lajunen. The Examiner, therefore, must be reversed.

Regarding Claim 37, Step e in light of Step d

Step e recites:

e. “providing said survey to a sample population of 200 or more people;”

Step d recites:

d. “composing a survey of 50 or more candidate questions that are indicative of personality traits that may affect accident involvement and reporting;”

The Examiner has asserted that Lajunen teaches that an earlier reference, Spolander (1993), discloses providing a survey comprising questions that are indicative of personality traits to a population of 200 or more people. (Lajunen page 307, paragraph 2). (page 8 of Office action)

This is a misreading of the teachings of Lajunen and ignores the competent rebuttal evidence provided by Dr. Thompson. As indicated in Dr. Thompson’s answer to question 5:

“Lajunen et al. does not give any indication that Spolander’s study comprised items that are indicative of personality traits that may affect accident involvement and reporting.”

As reported by Lajunen, Spolander provided self-assessments of driver skills to 1300 drivers. (Lajunen, page 307, paragraph 2) 1300 is more than 200, but there is no indication that Spolander’s self assessments comprised items that are indicative of personality traits. A personality trait is different than a driver skill.

Furthermore, a person of ordinary skill in the art would have no motivation for modifying Spolander’s study to comprise items that are indicative of personality traits. As Dr. Thompson further states in his detailed answer to question 5:

“Given Lajunen’s description, it appears that the primary purpose of Spolander’s research was to explore the gap between actual and perceived driving skill, with no mention of personality traits.”(emphasis added)

There is no mention of personality traits in Spolander’s study. A person of ordinary skill in the art would have no reason to add questions related to personality traits to a study directed towards perceived driving skills. This would add to the cost without providing any benefit.

Accordingly, the Examiner erred by further misconstruing the teachings of Lajunen. The Examiner, therefore, must be reversed.

Regarding Claim 37, Step g in light of Step f iii. 1.

Step g recites in part:

g. “analyzing said information ... when said conventional classification information is controlled for...”

Step f iii. 1. recites in part:

f. “collecting information from said sample population, said information comprising;...”

- iii. *conventional classification information ..., said conventional classification information comprising;...*
1. *age;...”*

The Examiner has asserted that Lajunen performed a statistical analysis wherein he controlled for the age of the subjects. Claim 37 step g requires that conventional classification information is controlled for. Step f iii. 1. requires that said conventional classification information includes age. (page 9 of Office action)

“Controlling for a variable” means that the effect of an incidental variable (e.g. age) is separated out so that the effect of a desired variable (e.g. target questions) can be more clearly seen.

The Examiner’s assertion that Lajunen controls for age is a misreading of the teachings of Lajunen and ignores the competent rebuttal evidence provided by Dr. Thompson. As indicated in Thompson’s answer to question 6:

“Lajunen et al. sampled a population of university students that were all about the same age. It is not possible to meaningfully control for age if all of the sample population has about the same age.” (emphasis added)

It is not possible to meaningfully control for age if all of the sample population has about the same age. Lajunen’s students had an average age of 23.9 years with a standard deviation of 4.32 years (Lajunen page 308, paragraph 7). This means that Lajunen’s subjects ranged in age from about 19 to about 28 years old. The age of the Applicant’s sample population, however, ranged from 16 to 77 years old (Specification page 10, line 8). Thus the Applicant had enough range in age to control for age. Lajunen did not.

Furthermore, a person of ordinary skill in the art would have no motivation for modifying Lajunen’s study to increase the range in age of the subjects so that age

could be controlled for. As Dr. Thompson further states in his detailed answer to question 6:

“This further speaks to the limited scope and purpose of the Lajunen study; they were primarily interested in the psychological factors that would be common across ages...”(emphasis added)

Lajunen was primarily interested in psychological factors that would be common across ages. If an investigator is studying psychological factors that are common across ages, there is no need to control for age.

Accordingly, the Examiner erred by misconstruing the teachings of Lajunen. The Examiner, therefore, must be reversed.

Further Regarding Claim 37, Step g

Step g reads in part:

g. “analyzing said information to select said set of four or more target questions from among said candidate questions.... “

The Examiner has asserted that Lajunen performed a statistical analysis of the results of his survey to select a set of four or more target questions from a set of candidate questions. (page 9 of Office action)

This is a misreading of the teachings of Lajunen and ignores the competent rebuttal evidence provided by Dr. Thompson. As indicated in Dr. Thompson’s answer to question 7:

“Lajunen et al. made no attempt to reduce the number of items to a critical few correlated with accident involvement. Nor would it have been possible based on their method of data analysis”. (emphasis added)

It would not have been possible for Lajunen to have selected a set of four or more target questions from his candidate questions based on his method of data analysis.

Lajunen needed all of his survey questions in order to calculate the multiplicity of personality factors and driver behavior factors that he analyzed. Even then, there was some question as to the reliability of his results (“...alphas remained low...” Lajunen page 309, paragraph 2)

Furthermore, a person of ordinary skill in the art would have no motivation for modifying Lajunen to select four or more target questions from a set of candidate questions. As Dr. Thompson further states in his detailed answer to question 7:

“Table 4 (of Lajunen) examines only full scales and subscales, not individual items, as Lajunen was interested in which psychological scales/subscales would correlate with the self-report factors.” (emphasis added)

Lajunen was interested in which psychological scales/subscales would correlate with the self-report factors. He was not interested in how the answers to individual questions related to accident involvement and reporting. A person of ordinary skill in the art would have no motivation for performing this analysis since it would add to the cost of the study without providing any benefit.

Accordingly, the Examiner erred by misconstruing the teachings of Lajunen. The Examiner, therefore, must be reversed.

b. None of the references alone or in combination teach the element of “wherein said step of analyzing said information to select said set of four or more target questions is carried out on a particular computer modified to calculate multiple correlations and the levels of confidence thereof.” Therefore, the Examiner must be reversed.

Claim 37 contains the limitation:

“wherein said step of analyzing said information to select said set of four or more target questions is carried out on a particular computer modified to calculate multiple correlations and the levels of confidence thereof.”

This limitation was added by amendment on January 6, 2009. The Examiner has explicitly disregarded this limitation in his rejection of April 28, 2009. The Examiner stated:

“...claim 37 is rejected as presented in the previous Office Action, mailed 7 October 2008.” (Office action, page 7, line 3)

The Examiner rejected claim 37 under 35 USC 103(a) with, word-for-word, exactly the same rationale he presented in the office action prior to the amendment.

The Examiner, however, must consider a “wherein” or “whereby” clause when it states a condition that is material to the invention. In *Hoffer v. Microsoft Corp.*, 405 F.3d 1326, 1329, 74 USPQ2d 1481, 1483 (Fed. Cir. 2005), the court held that when a whereby clause states a condition that is material to patentability, it cannot be ignored in order to change the substance of the invention.

Accordingly, the Examiner erred by not considering said wherein clause in his 103 analysis. The Examiner, therefore, must be reversed.

c. The Examiner ignores, without comment, the persuasive evidence of non-obviousness set forth in the Declaration of Dr. Nathan A. Thompson. Therefore, the Examiner must be reversed.

The Examiner has further erred in rejecting claim 37 under 35 USC 103(a) by failing to consider the above referenced Expert Declaration provided by Dr. Nathan Thompson or provide any reason why it is not persuasive.

“All of the competent rebuttal evidence taken as a whole should be weighed against the evidence supporting the prima facie case. In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984).... If, after evaluating the evidence, the examiner is still not convinced that the claimed invention is patentable, the next Office action should include a statement to that effect and identify the reason(s)” (MPEP 716.01(d), emphasis added)

The Examiner erred by not identifying any reason why the competent rebuttal evidence provided by Dr. Thompson was not persuasive. Had the Examiner properly considered the evidence, the Examiner would have recognized that the rejections are improper. The Examiner, therefore, must be reversed.

2. Claims 38 and 39 meet the requirements under 35 U.S.C. § 103(a), as such claims are patentably distinct over Haner in view of Lajunen et al. and De Tore et al. because (a) the Examiner has not set forth a *prima facie* case of obviousness with respect to these claims; (b) one skilled in the art would not have been motivated to modify Lajunen in the alleged manner; (c) the Examiner misconstrues Lajunen as disclosing that which it does not.

(a) the Examiner has not set forth a *prima facie* case of obviousness with respect to these claims

Claim 38 reads:

38. *"The method of claim 37 wherein said set of four or more target questions comprises not more than ten questions."*

The Examiner asserts that Lajunen discloses a method wherein a set of four to ten target questions are selected by a survey method. (page 10 of Office action)

This is a misreading of the teachings of Lajunen and ignores the competent rebuttal evidence provided by Dr. Thompson. As indicated in Dr. Thompson's answer to question 7:

"Lajunen et al. made no attempt to reduce their number of items to a critical few correlated with accident involvement. Nor would it have been possible based on their method of data analysis." (emphasis added)

It would not have been possible to select 4 to 10 target questions based on Lajunen's method of data analysis.

Lajunen correlated Traffic Specific Measures (top row of Lajunen, Table 4, page 313) with Accidents/exposure (bottom row of Lajunen Table 4, 313). The Traffic Specific Measures are based on the answers to Lajunen's survey questions, but Lajunen does not present the answers to the questions themselves. It would not have been possible, therefore, to select 4 and 10 target questions.

Accordingly, the Examiner has failed to set forth a *prima facie* case of obviousness. The Examiner, therefore, must be reversed.

(b) one skilled in the art would not have been motivated to modify Lajunen in the alleged manner

A person of ordinary skill in the art would have no motivation for modifying Lajunen et al. to analyze his results to identify 4 to 10 target questions. As Dr. Thompson states in his detailed answer to question 7:

Table 4 (of Lajunen) examines correlations between personality scales and the self-report driver skill inventory factors. This table, however, did not provide any evidence that Lajunen et al.'s survey could be shortened and still obtain meaningful results. (emphasis added)

Lajunen did not provide any evidence that his survey could be shortened and still obtain meaningful results. A person of ordinary skill in the art, therefore, would not have a reasonable expectation of success from shortening the survey to 4 to 10 questions.

Accordingly, the Examiner has erred by failing to provide a motivation to modify Lajunen. The Examiner, therefore, must be reversed.

(c) the Examiner misconstrues Lajunen as disclosing that which it does not

The Examiner makes reference to Lajunen's abridgement of Levenson's IPC scale to three sets of 4 items each. Each of these sets was used to measure one of Levenson's scales of Internality, Powerful Others, and Chance. (Lajunen page 309, paragraph 2, line 8). Lajunen gives no indication, however, that the "4 items" used to calculate a Levenson IPC scale could instead be used to indicate accident involvement and reporting. On the contrary, Lajunen teaches away from this conjecture in table 4 where he doesn't even attempt to draw a correlation between a

Levenson IPC scale and Accidents/exposure. Both are shown as dependent variables relative to Traffic specific measures.

Accordingly, the Examiner has misconstrued Lajunen. The Examiner, therefore, must be reversed.

3. **Claim 44** meets the requirements under 35 U.S.C. § 103(a), as such claim is patentably distinct over Haner in view of Lajunen et al. and De Tore et al. because (a) the Examiner misconstrues Haner as teaching that which it does not; and (b) the Haner teaches away from the claimed invention.

Claim 44 reads:

44. *"The method of claim 37 wherein said method further comprises the steps of:*

- a. providing to said prospective insured a second set of questions related to one or more of said prospective insured's age, gender, annual mileage or driving experience;*
- b. obtaining a set of responses to said second set of questions; and*
- c. in said step of automatically classifying said prospective insured into a risk class based at least in part on said set of responses to said four or more target questions, also basing said classification of said prospective insured at least in part on and said set of responses to said second set of questions."*

The Examiner has rejected claim 44 under 35 U.S.C. 103(a) as being unpatentable over Haner in light of Lajunen and DeTore.

The Examiner asserts that the "personal history form" of Haner corresponds to the "second set of questions" of claim 44. The Examiner then further asserts that Haner classifies his prospective insureds into a risk class based at least in part on said personal history form. (page 11 of Office action)

The Applicant agrees that the personal history form of Haner corresponds to the second set of questions of claim 44.

The Applicant disagrees, however, that Haner used his personal history form to classify a prospective insured into a risk class. On the contrary, Haner's goal was to substitute a personality test for a personal history form. Haner states:

“...the personal history form is not used for rating purposes...”

(Haner page 51 paragraph 3).

Haner does not use his personal history form for rating purposes. Haner, therefore, explicitly teaches away from the Applicant's claimed invention.

Accordingly, the Examiner has misconstrued Haner. The Examiner, therefore, must be reversed.

4. **Claim 45** meets the requirements under 35 U.S.C. § 103(a), as such claim is patentably distinct over Haner in view of Lajunen et al. and De Tore et al. because (a) the Examiner has not set forth a *prima facie* case of obviousness respect to these claims; (b) the Examiner mischaracterizes the content of the questions as a matter of mere use choice/design choice, when the claimed methodology sets forth a specific method for determining the questions; (c) the Examiner ignores competent rebuttal evidence provided by Dr. Thompson.

Claim 45 reads:

45. *"The method of claim 37 wherein said personality traits comprise:*

- a. impulsivity;*
- b. locus of control;*
- c. self-esteem;*
- d. invulnerability;*
- e. hostility;*
- f. anger;*
- g. trust;*
- h. social desirability; and*
- i. thoroughness in decision making."*

The Examiner has rejected claim 45 under 35 U.S.C. 103 as being unpatentable over Haner in light of Lajunen and DeTore.

The Examiner has asserted that the specific content of the questions is a matter of mere user choice / design choice. (page 12 of Office action) This ignores the competent rebuttal evidence provided by Dr. Thompson as provided in his answer to question 3:

"The most significant major personality factors related to a person's tendency to report an accident are Conscientiousness and Agreeableness. Lajunen et al. did not measure either of these traits. Their absence is noteworthy."

Claim 45 requires questions related to Social Desirability. Social Desirability is a component of Agreeableness. Agreeableness is required to measure accident reporting. Hence the Applicant's choice of personality traits is more than a mere design choice.

Nor would a person of ordinary skill in the art have a motivation for modifying Lajunen et al. to include the personality traits of Conscientiousness and Agreeableness. As Dr. Thompson further states in his detailed answer to question 3:

"The goal of Lajunen's study was correlating personality factors with perceived driving skill and safety, not accident reporting."

Lajunen was concerned with perceived driving skill and safety, not accident reporting. There was no motivation, therefore, to burden his survey with insurance specific considerations, such as the tendency of a person to report an accident.

Accordingly, the Examiner has failed to show that the choice of personality traits is a mere design choice. The Examiner, therefore, must be reversed.

|

VIII. **Claims appendix.**

37 A method for risk classification of a prospective insured, said prospective insured applying for automobile insurance, said prospective insured belonging to a demographic group, said method comprising:

- a. providing to said prospective insured a set of four or more target questions;
- b. obtaining a set of responses to said set of four or more target questions from said prospective insured;
- c. automatically classifying said prospective insured into a risk class based at least in part on said set of responses;

wherein said set of four or more target questions have been devised by a survey method comprising the steps of:

- d. composing a survey of 50 or more candidate questions that are indicative of personality traits that may affect accident involvement and reporting;
- e. providing said survey to a sample population of 200 or more people;
- f. collecting information from said sample population, said information comprising:

i.responses to said survey;

ii.the number of automobile insurance claims reported by each of said persons in said sample population; and

iii.conventional classification information for automobile insurance underwriting, said conventional classification information comprising;

1. age;
2. marital status;
3. years of driving experience;
4. number of miles driven per year;

g. analyzing said information to select said set of four or more target questions from among said candidate questions such that the survey responses by said sample population to said set of four or more target questions significantly increase the multiple correlation between said survey responses and said number of automobile insurance claims reported by said sample population when said conventional classification information is controlled for, said increase in the multiple correlation being statistically significant to at least the 5% level of confidence;

wherein said step of analyzing said information to select said set of four or more target questions is carried out on a particular computer modified to calculate multiple correlations and the levels of confidence thereof.

38 The method of claim 37 wherein said set of four or more target questions comprises not more than ten questions.

39 The method of claim 37 wherein said set of four or more target questions comprises not more than four questions.

44 The method of claim 37 wherein said method further comprises the steps of:

- a. providing to said prospective insured a second set of questions related to one or more of said prospective insured's age, gender, annual mileage or driving experience;
- b. obtaining a set of responses to said second set of questions; and
- c. in said step of automatically classifying said prospective insured into a risk class based at least in part on said set of responses to said four or more target questions, also basing said classification of said prospective insured

at least in part on and said set of responses to said second set of questions;

45 The method of claim 37 wherein said personality traits comprise:

- j. impulsivity;
- k. locus of control;
- l. self-esteem;
- m. invulnerability;
- n. hostility;
- o. anger;
- p. trust;
- q. social desirability; and
- r. thoroughness in decision making.

46 The method of claim 37 wherein at least one of said candidate questions is a personal statement with which a person is asked to indicate agreement or disagreement.

IX. **Evidence appendix**

Presented below is the copy of the declaration by Dr. Thompson submitted by the Applicant under 37 CFR 1.132. The evidence was entered into the record by the Examiner in the PAIR record mail date 1/6/2009, document code AF/D.

Expert Declaration Submitted Under 37 CFR 1.132**Date Prepared:** December 9, 2008**Prepared By:** Nathan A. Thompson, Ph.D., CCOA**Services Provided For:** Mark Nowotarski as patent agent for patent applicant**Requested Service:** Address the specific questions with respect to the U. S. patent application

Qualifications

I am a vice president of Assessment Systems Corporation in St. Paul MN. My responsibilities include the design and development of computerized psychometric tests. In addition, I have a Ph.D. in Psychometrics from the University of Minnesota with a supporting area of industrial/organizational psychology. I am therefore qualified to render opinions on the subject matter of patent application "Risk Classification Methodology", US patent application serial number 10/601118 (Robertson et al.) and the cited prior art Lajunen et al.

I am an independent consultant. I have no conflict of interest with any of the parties otherwise related to any of the patents or patent applications referred to in this opinion.

Limitations and Reliances

This opinion is directed at responding to specific questions framed by Mark Nowotarski, the patent agent of record.

Mark Nowotarski provided information necessary for me to review and form an opinion in this matter. This information included a copy of the Robertson et al. patent application and a copy of an article by Lajunen and Summala (1995) (Lajunen et al.).

I have read and understood the Robertson et al. patent application and the article by Lajunen and Summala (1995) referenced in the questions, at least to the extent necessary to form an opinion on the specific subject matter of the questions I have been asked to consider.

Analysis and Opinion

The following text presents nine questions regarding the Robertson application and the Lajunen paper, and my responses.

1. *Does the disclosure by Robertson et al. provide enough information so that a person who is qualified in psychometric test design could develop a list of more than four target questions that increased the multiple correlation to the number of automobile insurance claims to at least the 5% level of confidence?*

Answer: Yes. There is enough information in Robertson et al. for a person qualified in the field of computer implemented psychometric test design to develop a list of more than four target questions.

Details: The statistical analysis process used by Robertson et al. produces the minimum number of target items (i.e. questions) from the candidate items that incrementally increase the multiple correlation with the dependent variable, automobile insurance claims. These items, however, are not the only items in the candidate questions that increase the multiple correlation. Many of the candidate items measure the same personality trait and hence their answers will be correlated with each other. This means that these redundant items can be added to the original four target items without compromising either the level of correlation or its statistical significance.

For example, one of the original four target items that Robertson et al. identified was “I don’t find it particularly difficult to get along with loud mouth obnoxious people”. A person skilled in psychometric testing will recognize this item as being indicative of the personality trait “social desirability”. “Social desirability” in turn is a component of the major personality trait “Agreeableness”. Another one of the candidate items listed by Robertson et al. but not one of the four original four target items was “I can think of no good reason for hitting anyone”. A person skilled in psychometric testing will recognize this item as also being indicative of the major personality trait “Agreeableness”, hence the answers to both questions will be correlated to each other. Thus, one would expect that this item could be added to the set of target questions to bring the total number of target questions to five without compromising either the level correlation or its statistical significance.

2. *Does Lajunen et al. describe a process where they select four or more target questions from a set of candidate questions based on the results of a multiple correlation to insurance claims?*

Answer: No. Lajunen selected the target questions for their survey from a set of candidate questions found in a number of known personality tests based on theoretical considerations, not empirical results.

Details: Lajunen et al. specifically say on page 309, line 23, that they selected their target items from candidate items found in different sets of known personality scales (e.g. Levenson, Zuckerman, etc.) based on theoretical aspects. It would have required a pilot study to select items based on empirical aspects for inclusion in the final study. Selecting the best items in each of these scales, however, was not the goal of their

research. There was no reason, therefore, to perform this kind of pilot study, especially given the time and expense involved.

3. *In your opinion, what are the most significant personality factors related to a person's tendency to report an accident to an insurance company? Did Lajunen measure any of these factors?*

Answer: The most significant major personality factors related to a person's tendency to report an accident are Conscientiousness and Agreeableness. Lajunen et al. did not measure either of these traits. Their absence is noteworthy.

Details: The goal of Lajunen's study was correlating personality factors with perceived driving skill and safety, not accident reporting. The variables utilized reflect this; traits found in the rows of Table 4 include sensation seeking, competitiveness, and other traits that might be linked to safety. Accident reporting is a different type of dependent variable.

Theoretically, I think the most significant major personality factors in the reporting of (as opposed to involvement in) accidents are conscientiousness and agreeableness. Conscientiousness is relevant because it refers in part to the strength of a person's conscience in their behavior, as well as to being deliberate in behavior. Agreeableness is relevant, as aspects of it are concerned with being considerate and believing others are trustworthy. The lack of conscientiousness and agreeableness in Table 4 of Lajunen et al. is conspicuous, as they are two of five primary personality traits agreed upon by personality researchers. It is important to note that these two traits are represented by the first and third of the Robertson et al.'s four questions shown to be correlated to accident involvement and reporting (Robertson page 10 line 25 to page 11 line 5). They are also represented by the more particular personality traits listed on page 8 of Robertson et al. "Social desirability", for example, is a component of agreeableness.

4. *Does Lajunen et al. describe a process where 200 or more subjects are given a survey of 50 or more questions (i.e. items) that are indicative of personality traits that may affect accident involvement and reporting?*

Answer: No. Lajunen et al. reported a study that only used 113 subjects.

Details: Lajunen et al. reported a study that:

- a) Only used 113 subjects;
- b) The subjects were only given several existing personality-related scales rather than a survey specifically constructed for this purpose as Robertson et al. does; and
- c) Correlated the results of those scales against self-report measures of driving skill and safety-motive.

The key difference is the dependent variable. Lajunen et al. utilized psychological rating scale type self-report measures as dependent variables, whereas Robertson et al. utilized actual accident involvement dependent variables. 113 subjects was a large enough sample for Lajunen et al.'s purpose. Increasing the number to 200 or more would have significantly added to the cost without necessarily increasing the validity of the results.

Lajunen et al. were interested in correlating personality variables with psychological variables, and Robertson et al. correlated personality variables with actuarial variables. Specifically, the actuarial variable, "accident involvement and reporting" as described in

Robertson et al. is not found in Table 1 of Lajunen et al. Lajunen's Table 1 presents the primary dependent variables of the study, which were underlying factors of self-reported driving characteristics, derived by a factor analysis. Factor analysis is a statistical methodology commonly used in psychological research to determine latent psychological factors and the strength of the correlation between individual items and those factors.

5. *Lajunen makes reference to a study by Spolander (1983) in the second paragraph of his introduction. Is there any indication from Lajunen's paper that the "driver self assessments" of Spolander comprised items that are "indicative of personality traits that may affect accident involvement and reporting" as we have used that term?*

Answer: No. Lajunen et al. does not give any indication that Spolander's study comprised items that are indicative of personality traits that may affect accident involvement and reporting.

Details: As Lajunen et al. discuss the driver self-assessments of Spolander, they only mention that the self-assessments are regarding "technical and defensive driving skills." These are compared to actual driving skills, not personality variables. Given Lajunen's description, it appears that the primary purpose of Spolander's research was to explore the gap between actual and perceived driving skill, with no mention of personality traits.

6. *Would it have been possible for Lajunen et al. to "control for age" as that phrase is used by Robertson et al.?*

Answer: No. Lajunen et al. sampled a population of university students that were all about the same age. It is not possible to meaningfully control for age if all of the sample population has about the same age.

Details: A sample is needed with a broad range of ages in order to statistically control for age. Lajunen only used a sample of university students that were all about the same age. They did not use a sample of a cross-section of the general population with ages in the range of 16 to 77 years, as Robertson et al. did (Robertson p. 10 lines 5 to 15). Thus it would not have been possible for Lajunen to "control for age" as Robertson did. This further speaks to the limited scope and purpose of the Lajunen study; they were primarily interested in the psychological factors that would be common across ages, rather than apply the results in combination with age and other conventional factors in the prediction of behavior.

7. *Does Lajunen et al. make any attempt to reduce their number of target questions to a critical few correlated with accident involvement on based on the results of their survey?*

Answer: No. Lajunen et al. made no attempt to reduce the number of items to a critical few correlated with accident involvement. Nor would it have been possible based on their method of data analysis.

Details: Lajunen et al. do not examine correlations between the personality scales and actual accident involvement and reporting. Nor do they examine individual items in an effort to pick the best-correlating ones to create a new scale. This is evident in Tables 1 and 4 of Lajunen. In Table 1, they examine each individual item with respect to its correlation on the latent factors, but have no intent of eliminating items and retaining only those with the strongest correlation. Table 4 examines correlations between personality scales and the self-report driver skill inventory factors. This table, however, did not provide any evidence that Lajunen et al.'s survey could be shortened and still

obtain meaningful results. Moreover, Table 4 examines only full scales and subscales, not individual items, as Lajunen was interested in which psychological scales/subscales would correlate with the self-report factors.

8. *Robertson et al. selected 4 target items from their survey based on empirical evidence. In your opinion, was the number 4 an arbitrary choice for Robertson et al.?*

Answer: No. The number of target items was determined by the actual results Robertson et al. got in their study. It was not a mere design choice.

Details: The most important consideration with regards to how many items to select is, in my opinion, the actual empirical evidence that items correlate with the variable of interest. This is referred to as the validity correlation. A related aspect is *incremental validity*, which is the extent that items provide information on top of the conventional predictor variables. Both should be taken into account. Whether two items or ten turn out to be correlated, it is an empirical question that is determined by the results of the study and not the design choice of the researcher.


9. *Is there any known single personality trait that would be measured by the four questions that Robertson et al. found correlated with auto insurance claims?*

Answer: No. The four questions identified by Robertson et al. do not cover any recognized single personality trait.

Details: The reporting (and involvement, to a lesser extent) in accidents is likely related to the two personality traits of Conscientiousness and Agreeableness, as previously discussed. The first of the four questions, “I don’t find it particularly difficult to get along with loud-mouthed, obnoxious people” is the type of item that is found on an Agreeableness scale. The third item, “I usually think carefully before doing anything” is the type of item that would be found on a Conscientiousness scale. The four questions of Robertson et al. therefore, do not cover a single recognized personality trait.

Declaration

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.



Signature:

Date: Dec. 9, 2008

X. Related proceedings appendix

There are no related proceedings

CONCLUSION

Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Mark Nowotarski, Applicants' Agent at 203 975 7678 so that such issues may be resolved as expeditiously as possible.

For these reasons this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Mark Nowotarski".

Mark Nowotarski
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